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Mr. Robert Schneider, Chair, and Board Members  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, No. 200  
Rancho Cordova, California 95670-6114

RE: Opposition: Conditional Waiver for Irrigated Land Discharges

Dear Chair Schneider and Board Members:

As the author of SB 646 (2005), I am keenly aware of the serious and increasing harm caused by the essentially unregulated discharge into our waterways of toxins and other pollutants in agricultural runoff. Your Board oversees 40% of California's land area and the second largest groundwater basin in the U.S., which supplies 74% of California's groundwater needs. The Board's decision on agricultural runoff will significantly impact the supply of clean water for all Californians. Simply put, the proposed waiver of waste discharge requirements that is before you will ensure that, rather than address the numerous significant problems affecting some of the state's most valuable resources, the degradation of Central Valley water quality generally - and the Delta in particular - will continue. Certain minimum requirements, including individual enrollment of every discharger, must be included in the new waiver for it to be a viable vehicle for improving surface and ground water quality in the Central Valley.

Agricultural pesticides, pathogens, nitrates and salts have been detected in drinking water supplies serving 16.5 million people in 46 California counties. The Department of Pesticide Regulation found pesticides in 96% of Central Valley locations tested; over half of these waterways violated standards for aquatic life and drinking water consumption. Recent U.C. studies show nearly all (97-100%) Central Valley sites affected by agricultural runoff violate water quality standards. Up to 80% of those sites are also toxic. Similar studies along the Central Coast found 100% of samples from agricultural runoff channels were toxic to aquatic life. A 2006 U.C. study of pesticide mixtures in agricultural runoff found "significant harmful effects" on frogs even when the individual pesticide levels in the mixture were 10 to 100 times below EPA standards.

Last fall, the Little Hoover Commission found, in its CALFED analysis, that "[t]he Delta is so critical to California's future that *no water policy will be successful if the estuary is not restored.*" California's vast Delta ecosystem is crashing rapidly. Biologists point to three likely causes of the ongoing Delta crash: degraded water quality, water diversions, and invasive species. Recent U.C. studies of Delta species such as striped bass which had been exposed to agricultural runoff found all of the fish tested had gastric inflammations, parasitic infestations, liver lesions, infections or a combination of these, results consistent with earlier work that found nerve damage and developmental abnormalities among affected newborn bass. Scientists attribute these problems to a chemical stew of pesticides, herbicides and cancer-causing elements in Delta waterways, which also serve as drinking water supplies for two-thirds of Californians. Indeed, according to the state's 2002 list of impaired water bodies, over 635 miles of rivers and streams in the Central Valley, including the Sacramento and San Joaquin Rivers and Delta, are so polluted by agricultural pesticides that they are unsafe for uses such as fishing, swimming, and/or drinking.

In its 2006-07 Budget Bill Analysis, the LAO found that "the level of compliance is low" with the current Central Valley waiver. Though ten agribusiness coalitions have formed around the waiver, the discharger coalitions have repeatedly failed to comply with even the minimal terms of the current waiver, including:

- failure to comply with the monitoring and reporting provisions of the waiver;
- failure to identify currently applied best management practices (BMPs) to control pollution, propose new BMPs, identify who has or has not implemented specific management measures, or describe how the effectiveness of applied BMPs will be monitored; and
- failure to present a detailed plan of action to address identified water quality violations.

However, despite consistent and widespread noncompliance with minimal waiver conditions, it is our understanding that this Board has never initiated an enforcement action against a coalition or individual discharger. Although monitoring has identified many hundreds of violations of water quality standards, only once has the Regional Board directed a coalition to prepare a management plan that identifies how the violations will be addressed. The proposed new waiver does nothing to correct this elemental deficiency.

The current and proposed new waivers also conspicuously fail to contain requirements essential to success, including: (a) requirements to prevent further pollution of the groundwater basin, and (b) a list of those participating in the waiver. The Central Coast agricultural runoff waiver already includes both of these essential elements, with approximately 90% of irrigated acreage already enrolled.

With respect to the latter point, the LAO specifically recommended that coalitions "provide their membership lists to the regional board as a condition of" enrollment and make them public, as is required in every other discharge program. It is our understanding that, since December 2005, fully 1,800 staff hours have been spent trying to identify coalition members using the convoluted process in the waiver. The waiver's cumbersome process for identifying dischargers has used up

almost 20% of all the fees that the coalitions have paid into the program — and the work is ongoing.

This waste of resources necessitated by a poorly drafted waiver exacerbates the waiver's significant understaffing problem. The Central Valley Board workplan identifies 34 PYs as minimally necessary to implement the waiver. However, only 18.5 PY are authorized, and of that only 12 PYs actually work on the waiver. A mere five PYs have been funded by waiver fees. Yet the coalitions assert that the program is too large, and that no fee increases are warranted. Without fee support of an adequate staffing ratio, there will be essentially no discharger-funded oversight of this critical program, unlike every other discharge program in the state.

As noted above, the proposed new waiver fails to fix the clear problems with current waiver. The new waiver:

- Fails to require enrollees to sign up as intending to comply with the waiver,
- Fails to require management plans, even when standards are already being violated, unless the Executive Officer in her discretion decides to order development of the plan, and
- Fails to include groundwater requirements (which are already included in the Central Coast region waiver).

Disturbingly, the proposed new waiver also weakens the existing waiver by removing all references to a timeline for compliance, stating instead only that the process will be evaluated "as time and resources allow." It compounds this problem by also removing the basic accountability requirement that the Executive Officer provide regular updates to the Regional Board regarding the effectiveness of the conditional Waivers.

The proposed waiver is also weaker than the existing program with regard to the exclusion of water quality objectives and in the fact that a monitoring plan will not be released until after the adoption of a waiver.


At a minimum, if the Board chooses to extend a waiver, the new waiver must include the following provisions:

- All dischargers must file "notices of intent to comply" with the waiver,
- Enrollees must prepare individual farm-based Pollution Prevention Plans,
- Coalitions must develop management plans that address all water quality standards violations,
- Enrollees must comply with set requirements for discharges to groundwater, not just surface water, and
- The monitoring component must include independent third-party monitoring.
- Fees must be set to support at least the 18.5 PYs authorized to oversee the program.

The Central Valley Regional Board's current waiver essentially cedes the Board's statutory responsibility to protect waterways to these coalitions. The Regional Board does not know who

is discharging pollutants, what pollutants are being discharged, who is participating in the waiver program, or who has or has not implemented BMPs. The health of California's water supply and Delta depends on how the Central Valley Regional Board acts now to fix its broken agricultural runoff program.

Sincerely,



Senator Sheila Kuehl, Chair  
Senate Natural Resources and Water Committee

cc: Tam Doduc, Chair, SWRCB  
Celeste Cantu, Executive Office, SWRCB  
Pamela Creedon, Executive Officer, Central Valley RWQCB  
Bill Croyle, Irrigated Lands Program, Central Valley RWQCB